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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

GERAWAN FARMING, INC.,

Appellant,

v.

AGRICULTURAL LABOR RELATIONS
BOARD,

Respondent.

F074423

(Super. Ct. No. 16CECG00411)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Kristi Culver Kapetan, Judge.

Irell & Manella, David A. Schwarz; Barsamian & Moody, Ronald H. Barsamian; and Michael P. Mallery for Appellant.

Santiago Avila-Gomez and Todd M. Ratshin for Respondent.

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Gerawan Farming, Inc. (Gerawan) filed a petition for writ of mandate seeking an order directing the Agricultural Labor Relations Board (ALRB or the board) to reverse an administrative law judge's (ALJ) interlocutory evidentiary ruling issued during an unfair

labor practice (ULP) proceeding.¹ Specifically, Gerawan seeks an order compelling the board to (1) vacate the ALJ's ruling revoking two subpoenas Gerawan served on the board and the board's general counsel (general counsel), and (2) produce the records sought by the subpoenas. Gerawan also seeks declaratory and injunctive relief, asserting the board's refusal to allow interlocutory review of the ALJ's ruling and the conduct of the board and general counsel, must be declared unconstitutional and enjoined. The board demurred to the petition on the ground the superior court did not have subject matter jurisdiction over Gerawan's claims because Gerawan had not exhausted its administrative remedies before the board. The court sustained the demurrer without leave to amend. Gerawan appealed from the subsequent judgment of dismissal.

During the pendency of this appeal, the ALJ granted an ALRB regional director's request to withdraw the underlying ULP complaint against Gerawan. Following an administrative appeal of the ALJ's decision, the general counsel upheld the dismissal of the ULP charges, thereby terminating the administrative process. The board moved to dismiss this appeal in light of this development. We conclude the appeal is moot and dismiss it.

FACTUAL AND PROCEDURAL BACKGROUND

The following facts are taken from Gerawan's writ petition, the attached exhibits, and material the trial court judicially noticed.

The Underlying ULP Charges

In April 2015, a former Gerawan employee, Rafael Marquez Amaro (Marquez), and the United Farm Workers of America (UFW), filed separate ULP charges against

¹ Under the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Lab. Code, § 1140; the Act), the five-member board is empowered to prevent agricultural employers, labor organizations, and their agents from engaging in unfair labor practices. (Lab. Code, §§ 1141, subd. (a), 1153 et seq., 1160.) Generally, the board's role is to adjudicate administrative complaints of unfair labor practices. (Lab. Code, §§ 1160-1160.3.)

Gerawan. The charges alleged Gerawan unlawfully suspended and then terminated Marquez. The general counsel and its staff commenced an investigation of the charges.²

The Injunctive Relief Proceeding

On May 12, 2015, the general counsel, in compliance with the board's internal policies, requested authorization from the board to seek injunctive relief in superior court to compel Gerawan to reinstate Marquez and "maintain the status quo pending resolution of the underlying unfair labor practice allegations."³ In support of that request, the

² The general counsel, who is appointed by the Governor, has the "final authority, on behalf of the board, with respect to the investigation of charges and issuance of complaints [for unfair labor practices], and with respect to the prosecution of such complaints before the board." (Lab. Code, § 1149.) "The general counsel acts autonomously, and is not an agent of the ALRB. [Citation.] Only the general counsel, not the ALRB itself, is authorized to issue unfair labor practice complaints." (*The Termo Co. v. Luther* (2008) 169 Cal.App.4th 394, 411-412.)

³ The Act gives the board the power to seek injunctive relief in superior court. (Lab. Code, § 1160.4, subd. (a) ["The board may, upon finding reasonable cause to believe that any person has engaged in or is engaging in an unfair labor practice, petition the superior court ... for appropriate temporary relief or restraining order."].)

Pursuant to a March 6, 2015, internal management memorandum, the board delegated the authority to apply for injunctive relief to the general counsel as follows: "The General Counsel may initiate and prosecute injunction proceedings as provided in Section 1160.4 only upon approval of the Board. In accordance with this requirement, the General Counsel shall provide copies of the proposed complaint for such relief and the papers in support thereof at least 24 hours prior to filing the application and shall further provide copies of any and all papers filed in the case by any person, and any orders of the court within 24 hours of their receipt. The requirement of Board approval shall extend to the pursuance of any appeals or defenses to appeals that may follow the initial filing in the superior court and Board approval must be sought at least 24 hours before the date of filing. All complaints, appeals, or defenses to such appeals shall include the representation that Board approval has been obtained. The General Counsel shall report to the Board on the outcome of all court proceedings. The Board shall act upon such requests for injunctive relief and all other related requests within 24 hours of their receipt. The obligations under this paragraph shall not include the provision to the Board of any facts or other information which would constitute prohibited communications under sections 20700 and 20740 of the Board's regulations. (Title 8, Cal. Code Regs., sec 20700, 20740.)"

general counsel submitted pleadings and evidence (the TRO packet) to the board, without providing Gerawan notice or an opportunity to be heard.

That same day, an ALRB staff member who participated in the underlying investigation (the whistleblower) reported to an assistant of the board's chairman that " 'misleading,' 'false,' and 'vague' statements had been made in the sworn declaration submitted with the 'TRO packet.' " The board disclosed the whistleblower's communication to Gerawan, the UFW and the general counsel as a prohibited party communication, and advised the general counsel it had until May 22, 2015, to "set forth facts or contentions to rebut" the "facts or contentions" contained in the whistleblower's statement. To Gerawan's knowledge, the general counsel did not file a response.

On May 14, 2015, the board issued an administrative order granting the general counsel "conditional authorization" to file the petition for injunctive relief. (*Gerawan Farming, Inc.* (May 14, 2015) ALRB Admin. Order No. 2015-06.) The order states the board ruled on the general counsel's request on May 12, 2015, via a letter to the general counsel, and the decision whether to file the petition now lay with the general counsel. The order does not explain the conditions authorizing the filing of the petition or attach the authorizing letter.⁴

⁴ Immediately after receiving the whistleblower's statement and again after the board's May 14, 2015, order, Gerawan asked the board to provide it with a copy of the TRO packet. The board denied Gerawan's Public Records Act (Gov. Code, § 6251) (PRA) request on May 26, 2015. On June 1, 2015, Gerawan filed a PRA enforcement action in Sacramento County Superior Court. Following a hearing, the Sacramento court ordered the board to make the TRO packet and the board's letter to the general counsel granting conditional authorization available to Gerawan. The board filed a petition for writ of mandate with the Third District Court of Appeal, which issued a stay of the Sacramento court's order and an order to show cause. The appellate court ultimately directed that a writ of mandate issue ordering the superior court to vacate its order and enter a new order denying Gerawan's request for disclosure, as the communications were protected by the attorney-client privilege and therefore exempt from disclosure under the PRA. (*Agricultural Labor Relations Board v. Superior Court* (2016) 4 Cal.App.5th 675, 681.)

On June 1, 2015, the general counsel filed a petition in Fresno County Superior Court seeking an ex parte application for a temporary restraining order. A hearing was held the following day and the trial court subsequently issued an order denying the application. Gerawan later served the general counsel with requests for production of documents with a deposition notice of the person most knowledgeable, but the discovery requests became moot when the general counsel voluntarily dismissed the petition with prejudice on July 20, 2015.

The ULP Proceeding

The general counsel filed a consolidated ULP complaint against Gerawan on June 30, 2015. The complaint alleged Gerawan unlawfully suspended and terminated Marquez in retaliation for his support of the UFW, and for participating in an ALRB investigation and testifying in an ALRB hearing regarding Gerawan's unfair labor practices.

On August 28, 2015, Gerawan served subpoenas duces tecum on the general counsel and board seeking various records, including (1) communications between the general counsel and board regarding the May 12, 2015, injunctive relief request, including the TRO packet, (2) records relating to the whistleblower allegation the board received on May 12, 2015, and (3) documents supporting representations the general counsel made at the June 2, 2015, TRO hearing relating to its knowledge of the board's precharge communications with Marquez, its " '[re]investigation' of the investigation," and "its 'one hundred percent confiden[ce]' " there was reasonable cause to conclude Gerawan fired Marquez in retaliation for his union activities.

The general counsel and the board each filed motions to revoke the subpoenas, claiming, among other things, the attorney-client work product and deliberative process privileges. After briefing by the parties, the ALJ revoked the subpoenas. The ALJ found Gerawan wanted to "conduct a massive, time-consuming investigation into all manner of detail wholly unrelated to the issues joined by the administrative complaint and answer

involved here,” based on “a gossamer thread of ‘evidence’ recounted by one of Gerawan’s co-counsel and, perhaps, a less than stellar performance by the General Counsel’s office in the now closed TRO case.” The ALJ found “the likelihood that rummaging through all of the basically internal operational information [Gerawan] seeks by these subpoenas in pursuit of evidence relevant to the current proceeding is most likely to be quite small when compared with the obvious inordinate delay ... in resolving the central issues presented and the enormous expense that would likely be involved.”

On October 30, 2015, the board responded to a reporter’s request for information concerning the whistleblower allegations and other matters. The board deemed the reporter’s inquiries to be improper ex parte communications. The board declined to comment about the whistleblower and the board’s investigation, as they were subjects of the pending Marquez ULP case. The board also stated that it commenced an investigation in August 2015, which was pending completion. Gerawan, however, had no knowledge of this investigation.

On December 3, 2015, Gerawan applied to the board for special permission to appeal the ALJ’s ruling revoking the subpoenas.⁵ Gerawan argued interim review was necessary as the requested documents were central to its defense and essential to a fair proceeding. Gerawan asserted it would be improper for the board to rule on the application’s merits since the board could not decide whether to compel itself, “or its attorney claiming attorney-client privilege,” to comply with Gerawan’s discovery demands, and asked the board to recuse itself. The board denied Gerawan’s application in an administrative order. (*Gerawan Farming, Inc.* (Dec. 22, 2015) ALRB Admin. Order No. 2015-19.) The board found that under California Supreme Court authority, it was not precluded from ruling on Gerawan’s application; the ALJ’s order was an

⁵ Pursuant to California Code of Regulations, title 8, section 20242, subdivision (b), “[n]o ruling or order shall be appealable, except upon special permission of the Board.”

evidentiary ruling that was not subject to interlocutory review; and Gerawan's claims could be raised at the conclusion of the proceedings before the ALJ in exceptions to the board.

This Lawsuit

Gerawan filed a petition for writ of mandate in Fresno County Superior Court on February 9, 2016. The petition contains four causes of action—three seek a writ of mandate based on due process violations, and the fourth seeks declaratory and injunctive relief. In the due process claims, Gerawan alleges the board's order is subject to review as a collateral order and the order denied it due process because: (1) the communications between the general counsel and board when deciding whether to seek injunctive relief are improper ex parte communications; (2) the board withheld evidence of its investigations; and (3) the order denies Gerawan its constitutional right to an impartial decisionmaker.

In the fourth cause of action for declaratory and injunctive relief, Gerawan alleges “[t]he Board's Order and the Board's and General Counsel's conduct must be declared unconstitutional and in violation of its own regulations and must be enjoined.” Gerawan further alleges it “is an interested party entitled to declaratory relief addressing its rights and duties and resolving the actual controversy between Gerawan and [the Board] over the constitutionality of the Board's Order immunizing the Board's communications with, acceptance of evidence proffers from, and supervision, orchestration, or execution of investigations alone or in tandem with, the General Counsel.” Finally, Gerawan alleges “[t]he Board's conduct deprived Gerawan of a neutral adjudicator. The Board is in possession of secret evidence against Gerawan for which Gerawan is not given the opportunity to explain, rebut, or – particularly troubling in light of the ALRB whistleblower allegations – expose as fabricated. The Board's conduct further enmeshes itself and its interest in the outcome of the ULP proceeding with that of the General Counsel, rendering it incapable of making an impartial decision as a party with a vested

interest in the litigation. This is especially troubling in regard to the Board's ruling on its own petition to quash a subpoena directed towards itself."

Gerawan seeks an order compelling the board to (1) vacate the ALJ's November 24, 2015, order revoking the subpoenas served on the board and general counsel, and (2) produce the documents, and order the general counsel to produce the documents, sought by the subpoenas. Gerawan asks for declarations that: (1) "the Board's engaging in ex parte communications and evidence submissions with the General Counsel is unconstitutional as a violation of Gerawan's right to due process"; and (2) "the Board's acceptance of or participation in investigations into the whistleblower allegation, either alone or in conjunction with the General Counsel, related to a matter pending before it is unconstitutional as a violation of Gerawan's right to due process." Finally, Gerawan asks for an injunction prohibiting the board from (1) engaging in further ex parte communications and proffers of evidence with the general counsel, and (2) supervising or engaging in further factual investigations alone or with the general counsel without the full knowledge and presence of Gerawan counsel.

The board demurred to Gerawan's writ petition on administrative exhaustion and jurisdictional grounds, arguing the superior court did not have subject matter jurisdiction over Gerawan's claims because Gerawan had not exhausted its available administrative remedies before the board. In its opposition, Gerawan argued interim review was appropriate because the board's actions violated due process and exceeded the board's grant of authority. Gerawan further argued the only route available to obtain relief was through mandamus because (1) it had pursued all administrative remedies to obtain the withheld documents and since the board was opposing the production of these documents, administrative exhaustion was futile; (2) a writ was the only means to compel the board to disclose ex parte communications or information developed outside the administrative proceedings; and (3) it had suffered an immediate injury that subjected it to irreparable harm.

Following a hearing, the trial court sustained the demurrer without leave to amend, finding that it lacked subject matter jurisdiction over the petition. The trial court entered judgment in the board's favor and dismissed Gerawan's petition on July 5, 2016.

DISCUSSION

On June 26, 2017, the board filed a renewed motion to dismiss the appeal as moot due to intervening events that occurred during the pendency of this appeal.⁶ On January 6, 2017, the regional director of the board's Visalia Regional Office submitted a request, on behalf of the general counsel, to withdraw the ULP complaint, as the regional director had decided not to litigate the matter. The request was referred to the ALJ, who granted it on January 9, 2017, after noting the board's regulations allow the general counsel to withdraw a complaint without leave prior to commencement of the hearing. (Cal. Code Regs., tit. 8, § 20222, subd. (b).) The ALJ vacated all previously scheduled hearing dates.

Following the UFW's administrative appeal of that determination to the general counsel,⁷ the general counsel upheld the dismissal of the ULP charges on June 16, 2017. The general counsel concluded there was insufficient evidence to support the charges against Gerawan when it suspended and terminated Marquez, as the evidence showed Gerawan would have made the same decisions in the absence of Marquez's protected activity.⁸

⁶ The board filed its original motion to dismiss on February 7, 2017, but later moved to withdraw the motion without prejudice. We granted the board's motion to withdraw by order filed on March 7, 2017.

⁷ A charging party may file a request with the general counsel for review of a decision to dismiss a charge. The charged party may file a statement in opposition to the request for review. The general counsel may affirm the regional director's decision, remand for further consideration or evidence, or issue a complaint. (Cal. Code Regs., tit. 8, § 20219.)

⁸ In conjunction with its renewed motion to dismiss, the board filed a June 26, 2017, request for judicial notice of the following documents: (1) the January 9, 2017, order

The board argues that because the administrative proceeding has concluded, there is no legal basis to continue this litigation, as it seeks to enforce subpoenas in that proceeding. As a general rule, appellate courts will not address the merits of an appeal that has been rendered moot while the appeal is pending. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541 (*Eye Dog Foundation*).) A case is moot when the decision of the reviewing court “can have no practical impact or provide the parties effectual relief.” (*Woodland Park Homeowners Assn. v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, 888.) “ ‘[T]he duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.’ ” (*Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863, quoting *Mills v. Green* (1895) 159 U.S. 651, 653.) Whether a case has become moot is determined by evaluating the continuing viability of the parties’ original claims in light of the subsequent event. (*Davis v. Superior Court* (1985) 169 Cal.App.3d 1054, 1058.)

granting the request to withdraw the complaint; (2) the January 6, 2017, request to withdraw the complaint; (3) the general counsel’s June 16, 2017, letter upholding the dismissal of the complaint; and (4) the “Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the Agricultural Labor Relations Board with respect to Labor Code Section 1160.4(a)” dated August 7, 2017. We deferred ruling on the request, which we now grant. Gerawan does not oppose the request and the documents are judicially noticeable as administrative agency records. (Evid. Code, § 452, subd. (c).)

Here, the due process claims clearly are moot due to the termination of the administrative proceeding because we cannot grant Gerawan the relief it seeks, namely, a writ of mandate directing the board to reverse the ALJ's order and command compliance with Gerawan's subpoenas. The declaratory relief claim also is moot because the actual controversy Gerawan alleged, namely, its dispute with the board "over the constitutionality of the Board's Order" and whether the board's conduct deprived Gerawan of a "neutral adjudicator," no longer exists. "An issue becomes moot when some event has occurred which 'deprive[s] the controversy of its life,' " and a declaratory relief action based on such controversy should be dismissed. (*Giraldo v. Department of Corrections & Rehabilitation* (2008) 168 Cal.App.4th 231, 257-259; *Pittenger v. Home Savings & Loan Assn.* (1958) 166 Cal.App.2d 32, 36 ["An action for declaratory relief should be dismissed where it appears that no justiciable controversy exists."].)

Gerawan contends the withdrawal of the ULP complaint does not moot the declaratory relief action because "[t]here has been no change of the allegedly illegal practice and no guarantee that it will not resume in the future." (See *Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 929 [" 'It is settled that the voluntary discontinuance of alleged illegal practices does not remove the pending charges of illegality from the sphere of judicial power or relieve the court of the duty of determining the validity of such charges where by the mere volition of a party the challenged practices may be resumed.' "].) Gerawan argues that since the "Board has not disavowed its right to engage in ex parte communications with the General Counsel, and to refuse to disclose these documents, in this and in future matters," the board's "unconstitutional policy has not ceased" and continues to prevent it from obtaining documents in a new administrative action the general counsel filed against Gerawan on June 30, 2017.⁹

⁹ In June 2017, the general counsel consolidated four ULP charges the UFW filed against Gerawan with respect to four of its employees, one of whom is Marquez, and issued a consolidated complaint. There is nothing to suggest Gerawan's issues will

Gerawan's argument presumes it has challenged a board policy in its writ petition. (See *Ukrainian-American Bar Ass'n, Inc. v. Baker* (1990) 893 F.2d 1374, 1377 [concluding a controversy remained, and the case was not moot, where the complaint challenged the government's policy to deny lawyers access to certain aliens, not merely the government's handling of the case of one alien who was no longer in the United States].) The crux of Gerawan's challenge in the declaratory relief claim, however, is not to any board policy, but rather to the board's order and conduct in this matter. No continuing violation of rights has been alleged and Gerawan's claim of deprivation of rights focuses on the precise nature of the board's and general counsel's conduct in this case. While declaratory relief may be used to challenge an agency's alleged policies (*In re Claudia E.* (2008) 163 Cal.App.4th 627, 633), Gerawan did not allege any board policy it was challenging.¹⁰ Since Gerawan did not seek to invalidate a board policy, Gerawan's reliance on the principle that an appeal will not be dismissed where material

persist in this new proceeding, however, as there is no evidence the general counsel has requested authorization to seek injunctive relief from the board. Moreover, the allegations in the two proceedings are different. The now-dismissed ULP complaint alleged Gerawan terminated Marquez in retaliation for engaging in protected concerted activity, while the new complaint, rather than challenging Marquez's discipline, alleges with respect to Marquez, only that Gerawan committed unfair labor practices when it failed to notify the UFW of Marquez's suspension and termination, and failed to provide information the UFW requested concerning Marquez's discipline.

¹⁰ In its opening brief, Gerawan asserts it is challenging "an overarching policy premised upon an erroneous interpretation of constitutional law." Gerawan identifies this policy as "withholding ex parte communications on attorney-client grounds, or refusing to reveal documents obtained through its off-the-record investigation of the whistleblower allegations." In its reply brief, Gerawan asserts "[t]his case involves the Board's blanket concealment policy of evidence relating to whistleblower allegations raised in response to the General Counsel's request for Board authorization to seek injunctive relief in support of administrative proceedings before the Board," and claims nothing would prevent us "from issuing declaratory relief that the Board's ongoing policy of refusing to disclose ex parte communications from the General Counsel violates due process." Gerawan, however, does not allege any of these policies in its petition.

questions remain for the court's determination is misplaced. (*Eye Dog Foundation, supra*, 67 Cal.2d at p. 541.) Given the petition's allegations and the termination of the administrative proceeding, no material questions remain.

Gerawan also contends we should decline to dismiss the appeal as moot because the withdrawal of the ULP complaint implicated the generalized concern, expressed in *City of Erie v. Pap's A.M.* (2000) 529 U.S. 277, 288,¹¹ “about the manipulation of an appellate court's jurisdiction to seal a favorable decision from review, or to avoid an adverse ruling that would benefit Gerawan and other parties in other, similar cases.” Gerawan asserts it is apparent the board is attempting to deprive this court of jurisdiction to review its actions, as shown by the dismissal of the TRO proceeding as soon as Gerawan sought discovery and the attempt to dismiss this appeal. But as the board points out, it was the general counsel, not the board, which dismissed the TRO proceeding and upheld the regional director's decision to withdraw the ULP complaint. Moreover, there is no favorable ruling on the merits of Gerawan's claims that the board is seeking to preserve, as the superior court dismissed Gerawan's writ petition on jurisdictional grounds without reaching the merits.

Gerawan urges us to exercise our discretion to consider its claims because the “constitutionality of ex parte contacts between the adjudicative and prosecutorial branches of the ALRB is an issue of public interest.” (See *Johnson v. Hamilton* (1975) 15 Cal.3d 461, 465 [“ ‘[I]f a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot.’ ”].)

¹¹ In that case, the United States Supreme Court declined to dismiss the case as moot in part because “[o]ur interest in preventing litigants from attempting to manipulate the Court's jurisdiction to insulate a favorable decision from review” counseled against a finding of mootness. (*City of Erie v. Pap's A.M., supra*, 529 U.S. at pp. 288-289.)

However, “[t]he fact that an issue raised in an action for declaratory relief is of broad general interest is not grounds for the courts to grant such relief in the absence of a true justiciable controversy.” (*Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 662; *Wilson v. Transit Authority* (1962) 199 Cal.App.2d 716.) There still must be a bona fide dispute relating to the legal rights of the respective parties. (*City of Alturas v. Gloster* (1940) 16 Cal.2d 46, 48.) And “the controversy must be of a character which admits of specific and conclusive relief by judgment within the field of judicial determination, as distinguished from an advisory opinion upon a particular or hypothetical state of facts. The judgment must decree, and not suggest, what the parties may or may not do.” (*Monahan v. Dept. of Water & Power* (1941) 48 Cal.App.2d 746, 751, disapproved on another point in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 587-588, fn. 7.) Where, as here, the issues Gerawan raises regarding the board’s order and conduct have become moot, no actual controversy exists, and it is well within our discretion to decline to consider the import of communications between the board and general counsel in other cases.

Moreover, this case does not involve issues that are likely to recur yet evade review. (*Disenhouse v. Peevey* (2014) 226 Cal.App.4th 1096, 1103 [“the matter does not fall within the exception to the mootness doctrine for public interest issues capable of repetition, yet evading review”]; *Corrales v. Bradstreet* (2007) 153 Cal.App.4th 33, 46 [“cases are not moot when they present questions that are capable of repetition, yet evade review”].) As the board points out, if issues like those Gerawan complains about in this case occur again in the future, it will have full recourse to appellate review under Labor Code section 1160.8, which provides an available avenue to seek review of the board’s final orders in ULP cases. Gerawan asserts the board may evade judicial review by dismissing any proceeding that threatened to proceed to a final decision challenging its concealment of ex parte communications. This scenario is too speculative to persuade us the issue needs to be decided in this proceeding.

In sum, we conclude these proceedings before us have been rendered moot and we decline to exercise our discretion to reach the merits of the issues Gerawan raises. Accordingly, we dismiss the appeal.¹²

DISPOSITION

Respondent's "Renewed Motion to Dismiss Appeal as Moot," filed on June 26, 2017, is granted. The appeal is dismissed. Costs on appeal are awarded to respondent.

DE SANTOS, J.

WE CONCUR:

FRANSON, Acting P.J.

PEÑA, J.

¹² Gerawan has filed two requests for judicial notice—one with its combined opening brief and opposition to the board's renewed motion to dismiss the appeal, and the other with its reply brief. In the first request, filed July 25, 2017, Gerawan asks us to take judicial notice of the following documents: (1) its complaint filed in the Sacramento County Superior Court PRA case; (2) a hearing transcript from the whistleblower's administrative proceeding before the State Personnel Board; (3) the ULP complaint issued against Gerawan on June 30, 2017; (4) a March 2015 memorandum from the board's former chairperson to the board's former general counsel; (5) an email from the board's executive secretary to the parties in the underlying ULP proceeding; and (6) the board's petition for writ of mandate filed in the Third District Court of Appeal in *Agricultural Labor Relations Board v. Superior Court*, *supra*, 4 Cal.App.5th 675. We grant the request as to the ULP complaint issued on June 30, 2017 (Evid. Code, § 452, subd. (c)), but deny it as to the other documents, as they are irrelevant given our decision.

With respect to the second request, filed December 14, 2017, which asked us to take judicial notice of records from the whistleblower's administrative proceeding before the State Personnel Board and superior court records from the PRA lawsuit Gerawan filed in the Sacramento County Superior Court, we deny the request as irrelevant.